

March 25, 2004
DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Beverly Ann Thacker

Date of Filing: February 12, 2004

Case Number: TFA-0053

On February 12, 2004, Beverly Ann Thacker (Thacker) filed an Appeal from a determination issued to her on February 3, 2004, by the Oak Ridge Operations Office (Oak Ridge) of the Department of Energy (DOE) in response to a request for documents that Thacker submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. This Appeal, if granted, would require that Oak Ridge perform an additional search for responsive material.

I. Background

On January 8, 2004, Thacker made a FOIA request via telephone to Oak Ridge for a copy of the following records pertaining to her deceased father, Billy D. Jones: medical, personnel, radiation exposure, chest x-rays, industrial hygiene, and personnel security file. Telephone Request (January 7, 2004). Thacker requests verification of her father's records for use in the DOE Employee's Worker Compensation Program. According to Thacker, between April 1944 and October 1945, Mr. Jones was employed at the K-25 location of the Oak Ridge site by the following subcontractors: (1) Ford, Bacon & Davis; (2) J.A. Jones; and (3) L. K. Comstock Co. Inc. & Bryant Electric Co. Inc. On February 3, 2004, Oak Ridge sent Thacker a letter explaining that it had conducted a search but found no responsive material. Thacker appealed that determination on February 12, 2004, arguing that her father's military discharge papers indicated that he had worked at Oak Ridge prior to entering the Army Air Corps in October 1945. Letter from Thacker to Director, Office of Hearings and Appeals (OHA) (February 12, 2004) (Appeal). This led Thacker to conclude that there should be records relating to her father's work at K-25 because everyone residing on or working on the Oak Ridge Reservation at that time required identification. *Id.* In the Appeal, Thacker challenged the adequacy of the search and asks OHA to direct Oak Ridge to search again for responsive material regarding her father's alleged employment at the Oak Ridge site.

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must “conduct a search reasonably calculated to uncover all relevant documents.” *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). “The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Glen Milner*, 17 DOE ¶ 80,102 (1988).

We contacted Oak Ridge regarding the search for responsive material. Oak Ridge informed us that they searched all sites and record repositories (DOE Records Holding Area, Oak Ridge Associated Universities, K-25, X-10 and Y-12) and all Privacy Systems of Records (DOE-5, DOE-33, DOE-35, DOE-43, DOE-71, DOE-72, DOE-73). The DOE Records Holding Area repository and the Oak Ridge Associated Universities Centers for Epidemiological Research have paper and electronic data search capabilities for employees of major and prime contractor companies from the 1940s. Both databases can be searched by name, Social Security number, and company name. Oak Ridge searched on those identifiers but found no record in those files of Mr. Jones or of any employees of the companies mentioned in Thacker’s request. Electronic mail message from Amy Rothrock, Oak Ridge FOIA Officer, to Valerie Vance Adeyeye, OHA (February 23, 2004). Oak Ridge also searched the personnel security clearance assurance index card files. These files did contain records on J. A. Jones employees from the 1940s, stating their clearance level and other information. *Id.* However, the files did not contain any information related to Mr. Jones. *Id.* Oak Ridge thus concluded that Thacker’s father was not an employee of J. A. Jones, and that the other companies named in the request may have been subcontractors to J.A. Jones. *Id.*

Oak Ridge emphasized that they have conducted hundreds of FOIA requests for records of subcontractor employees in the last three years. *Id.* According to Oak Ridge, contractors did not retain records on subcontractor employees and the companies took their records with them at the end of the war. Oak Ridge stated that Thacker did not mention in her original request that her father entered the Army in 1945. Considering this new information, Oak Ridge suggests that Thacker submit a request to the Army FOIA office, since the Army may have had contracts with the subcontractors named in the request. *Id.* at 2.

Based on our analysis of the search as explained above, we find that Oak Ridge has conducted an adequate search for responsive material. Thacker indicated that her father worked for a subcontractor, and Oak Ridge has offered a credible explanation for the absence of subcontractor records in its files. Accordingly, the Appeal should be denied.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by Beverly Ann Thacker on February 12, 2004, OHA Case Number TFA-0053, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: March 25, 2004